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THE CASE OF Mr. WALPOLE.

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Mr. *WALPOLE's*

CASE,

IN A

LETTER

FROM

A Tory Member of Parliament,

TO HIS

Friend in the Country.

But that the House of Commons have committed any Man for any Offence that had no relation to a Member of the House of Commons, as it is against Law and Reason, so no Instance can be given till this Parliament. Judge *Jenkins*, concerning the Oppressions of the People.

Parliaments are as the Times are: If a turbulent Faction prevails, Parliaments are wicked; if the Times be sober and modest, prudent and not biassed, the Parliaments are right, good and honourable, and they are good Medicines and Salves; but in this Parliament——— Idem, Page 42.

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Mr. WALPOLE's

CASE,

IN A

LETTER

FROM

A Tory Member of Parliament,

TO HIS

Friend in the Country.

SIR,

THE Town has been a long Time in expectation of seeing some Account of Mr. *Walpole*'s Case Printed and Publish'd, which he, and his Friends, I presume, at first declin'd, to avoid giving any offence to the Parliament; lest a Handle might be taken from thence, to put new Hardships upon him, when his second Election should come under Consideration.

FOR what Reasons he still neglects to do himself Justice, I cannot pretend to determine, tho I could heartily wish he would undertake himself to give the World that Satisfaction, which I am perswaded, a true state of his Case must give to all impartial Men; but as the Defence he made in *the House*, to which I gave all possible attention, so entirely convinc'd me, that I thought I could not in justice give my consent, either to the Censure, or to any part of his Punishment, I hope I shall be pardon'd for endeavouring to give you a state of the Case, as it appear'd to me upon a full hearing, and a due consideration of the Evidence on both sides; which I choose the rather to do, that you may see by what Reasons I was induc'd to differ from my Friends, and Vote contrary to those Gentlemen with

whom I have the good Fortune generally to agree.

To ſet this Matter in a clear Light, it will be neceſſary to conſider the Reſolution which the *Houſe of Commons* came to, and the Crimes that Mr. *Walpole* is thereby charg'd with.

THE Reſolution was, 'That *Robert Walpole* 'Eſq; (a Member of this Houſe) in receiving 'the Summ of *Five hundred Guineas*, and in 'taking a Note for *Five hundred Pounds* more, 'on Account of Two Contracts for Forage of 'her Majeſty's Troops quarter'd in *North-Bri-* 'tain, made by him when *Secretary* at *War*, 'purſuant to a Power granted to him by the late 'Lord *Treaſurer*, is guilty of a high Breach of 'Truſt, and Notorious Corruption.

THE Crimes then are, *A High Breach of Truſt*, and *Notorious Corruption*; Crimes indeed of a very heinous Nature, and either of them, I ſhall always think ſufficient, to ſubject any Member to the juſt Reſentment and Cenſure of Parliament; but at the ſame time, I can never be of Opinion that any Man ought to ſuffer for being barely charg'd with a Crime, unleſs it be prov'd upon him, either by poſitive Evidence, or by ſuch Circumſtances as make the Preſumption full and clear againſt him; much leſs can I give my conſent to cenſure or puniſh any Man, when moſt Circumſtances concur in his Juſtification, where the Preſumption is ſtronger in his Favour than to his Prejudice; and eſpecially where there is *poſitive Evidence upon Oath* to acquit, and not

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the leaſt pretence of any direct Evidence to convict; and that this was Mr. *Walpole*'s Caſe, I am confident you will agree with me, when I have laid before you the Nature and Circumſtances of the Charge againſt him, and the Defence that he made in his own Vindication.

As to the firſt Article of *The Breach of Truſt*, I muſt obſerve to you, that after Mr. *Walpole* had been heard in his place, and was withdrawn, there was not one *Member of the Houſe* that did in the leaſt inſiſt upon that Head; all that ſpoke were either ſilent upon it, or did even admit, that he had clear'd himſelf of all Imputation upon that Score; ſo that indeed, I can no ways account how that came to be part of his Cenſure, but that being made part of the *Pocket-Queſtion*, agreed upon the Night before, not one Word of it was to be alter'd, let the Evidence upon hearing be what it would; and indeed I could wiſh, for the Honour of our *Party*, this had been manag'd with a little more Dexterity, than to let a Queſtion, which was the *Judgment of the Houſe in a Criminal Matter*, and is ſuppos'd at leaſt to be form'd upon the Evidence that was given on both ſides, be moved by a Gentleman, who, not being able to repeat his *Written Queſtion*, without having Recourſe to his Paper, unhappily diſcover'd that the Sentence was fix'd and agreed without Doors; and ſeconded by another, whoſe Talent in repeating, for no School-Boy ſays his Leſſon better, had betray'd him to ſpeak a fine Speech

upon Corruption and Bribery in general; which being made before the Cauſe was heard, had the Misfortune not to have one Word in it applicable to the Facts that had been given in Evidence, and will ſerve juſt as well upon any other Occaſion.

To remove all Suſpicion of Mr. *Walpole*'s having any proſpect of Advantage to himſelf, or any Body elſe, in making the Contract; he proved, 1. That it was not in his Power; as not being the only Perſon employ'd or entruſted by the Government to make the Contract; and, 2. That the Contracts were made upon the loweſt and moſt advantagious Terms that could poſſibly be had for the Government.

Upon the march of the *Engliſh Dragoons* into *Scotland*, which by the Laws of *Scotland* could not be quarter'd in that part of the Kingdom, according to the Method preſcrib'd by the Laws of *England*, the Duke of *Queensberry*, the Earls of *Marr*, *Loudon*, and *Seafield*, and other *Scotch* Lords, that were of the *Queen's moſt Honourable Privy Council*, were order'd to meet, and conſider of the moſt proper Methods of providing Forage for the Troops in *North-Britain*; who ſummon'd to their Aſſiſtance all the *Scotch* Officers of Dragoons that were then in *London*, and gave their Opinions *to her Majeſty*, that the moſt proper and practicable Method of providing Forage, was to make Contracts with *Commiſſarys of Forage*, as had been uſually practis'd in *Scotland*, and recommended Sir *Samuel Macklellan*, Lord Provoſt of *Edin-*

Edinburgh, who had frequently been employ'd in this Service before the Union, as a proper Perſon to be treated with.

THE Propoſals of Sir *Samuel Maclellan*, were referr'd to *Lieutenant-General Erle*, Mr. *Howe*, *Paymaſter-General of her Majeſty's Forces*, and Mr. *Walpole*, who at ſeveral Meetings did likewiſe conſult all the *Scotch* Officers; and the Prices of *Nine Pence*, and *Three Pence Halfpenny*, for Dry and Green Forrage for each *Twenty-four Hours*, were judg'd reaſonable, from the beſt Information that could be had, and agreed to accordingly by Mr. *Erle*, Mr. *Howe*, and Mr. *Walpole*, who were jointly and equally concern'd with Mr. *Walpole* in ſettling and agreeing the Prices, altho' the Contract was afterwards prepared and executed by him, *virtute Officii*, as *Secretary at War*; and this Mr. *Erle* did declare in the *Houſe of Commons* at the time when the matter was under Conſideration.

As the making the Contract, and agreeing the Prices and Conditions, was not left ſolely to Mr. *Walpole*, ſo he prov'd beyond Contradiction, that the Bargain was, in all reſpects, made upon as advantagious Terms for the Publick, as poſſibly could be had: and this was made appear, by comparing the Contract with all former Contracts made before the Union; with the Prices that the *Engliſh* Dragoons had been obliged to pay from the time they march'd into *Scotland* to the making of the Contract; and with the Prices that the *Scotch* Dragoons had

paid

paid that very Year, before a Proviſion was made for them by the Contract.

IT would be too tedious to recapitulate here the ſeveral Inſtances that were given to make good this part of Mr. *Walpole*'s Defence, but I beg leave to mention one Obſervation or two upon this Head that ſeem'd to me very material, and ſhew'd the manifeſt Advantage that the *Commiſſarys of Forage* had before the Union, from the Nature of the Payments, and the Security for their Money. In thoſe Contracts the *Six Months Ceſs and the Inland Exciſe* were aſſign'd over to the *Commiſſarys of Forage*, with full Powers to retain in their own hands, and to reimburſe themſelves all ſuch Sums of Money as they ſhould have advanc'd. In this Contract there could be no Security for the *Queen*'s Allowance, but ſuch Proviſion as the ſubſequent *Seſſion of Parliament* ſhould think fit to make, there being at that time no Money voted or granted for this Service; which Payments, whenever they ſhould be made, were ſtill liable to the hazard of a great Loſs by the Diſcount upon Tallys: And yet notwithſtanding theſe apparent Diſadvantages, the *Queen*'s Allowance by this Contract was leſs than the former Allowances by Poundage before the Union for the like Number of Horſes; and it was evident that the Profit upon the whole Contract to the Undertakers did not exceed 15 *l. per Cent.* which will never be thought an unreaſonable Profit by any body that is at all converſant in publick Buſineſs

ſineſs, where there is no Parliamentary Security, where conſiderable Sums of Money are to be advanced, and a long Credit muſt be given.

BUT a Contract having ſince been made at lower Rates, an Inference was drawn from thence of the unreaſonableneſs of this Contract; but if this Contract was juſtifiable, compared with all former Contracts, and the Circumſtances and Prices that governed at that time, 'tis very unjuſt to make any Imputation from the plenty or ſcarcity, dearneſs or cheapneſs of Forage that might afterwards happen; beſides the new Contract that was made upon lower Terms proved deſtructive of the Service, as appear'd by a Memorial ſign'd by the *Colonels* and *Commanding Officers*, which was preſented at the *War-Office*, ſetting forth, 'That *upon Account of the* 'Forage which was contracted for at ſuch low 'Rates, the Country cannot afford to bring it 'to Quarters, nor to give good in its kind; and 'that the Contractor has not any Magazines as 'he ought to have for the neceſſary ſupply of 'the Troops; for want whereof the Troops 'are ſo diſperſed, and ſeparated at ſuch diſtances, that they are render'd utterly incapable 'of any Service, and the Officers can no ways 'be anſwerable for their good Order and Diſcipline.

BY what has been ſaid it appears, that all poſſible Care and Precaution was us'd to obtain the moſt advantagious Terms that could be had for the Government, and that the Forage could

not be ſupply'd at lower Rates, conſiſtent with the Service, which leaves no room to ſuſpect that the Contract was made with any view or proſpects of a private Advantage to Mr. *Walpole*, or any other Perſon, and ſufficiently clears Mr. *Walpole* from the firſt part of the Charge, wherein he is ſaid to be guilty of a *High breach of Truſt.*

I come now to the Second Article, wherein Mr. *Walpole* is charg'd with *Notorious Corruption.* A Cenſure of this Nature ought to be grounded upon Evidence, where the notoriety of the Fact makes the Truth unqueſtionable; and not upon Suſpicion, which cannot in any juſtice be thought ſufficient to call a Crime notorious; and that there was nothing but a bare Suſpicion in this Caſe, may truly be affirm'd, becauſe the Charge itſelf amounts to no more before it comes to be controverted; but when *poſitive and expreſs Evidence upon Oath* is brought in oppoſition to a *bare Preſumption*, with what Juſtice can a Crime be call'd notorious? If what was offer'd in this Caſe had been only in mitigation of the Crime, I ſhould not have thought the Proceedings ſo very extraordinary: But as the Evidence that was given did in my judgment fully acquit Mr. *Walpole*, I will endeavour to give you the ſame Satisfaction that was given me, by conſidering and ſtating, as far as I am able to recollect it, the Evidence as it ſtood on both ſides.

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THE ground of the Charge is contain'd in Mr. *Montgomery*'s Depoſition, the chief part of the Defence in the Depoſition of Mr. *Mann*, and the Narrative of Col. *Douglas*. The Two firſt were ſworn before the *Commiſſioners of Publick Accounts*, and the *Narrative* is the Subſtance of the Evidence which Colonel *Douglas* gave in his place as a Member of Parliament, which for Mr. *Walpole*'s further Juſtification he reduc'd into Writing, and ſign'd. All theſe I will ſubjoin at the end of this, that you may have recourſe to them as you ſhall ſee occaſion: And let me only obſerve here, that neither the Depoſition of Mr. *Mann*, nor the Narrative of Colonel *Douglas*, do any ways contradict the Depoſition of Mr. *Montgomery*, but only explain thoſe Facts and Aſſertions, which are not in themſelves a direct Charge, but ſeem conceiv'd in general and obſcure Terms, on purpoſe to leave room for thoſe unjuſt Inferences that were drawn from 'em.

THE Fact charg'd is, 'Mr. *Walpole*'s receiving the Sum of 500 Guineas, and taking a 'Note for 500 *l.* more, on Account of Two 'Contracts for Forage made by him, *&c.* The Evidence to ſupport this, is, that part of Mr. *Montgomery*'s Depoſition, that ſays, 'This De'ponent gave Mr. *Walpole* a Bill or Note pay'able to himſelf, or Order, and deliver'd it 'into his Hands; and that he paid the ſaid 'Sum to Mr. *Mann*, who deliver'd the Note 'to this Deponent with Mr. *Walpole*'s Receipt 'upon the back of it. The like for the Se-

cond Year. The Queſtions will then be, Upon what Account theſe Notes were given to Mr. *Walpole*; and whether the Money was receiv'd by him, for him, or for his Uſe; Even Mr. *Montgomery* the Informer ſwears, 'That Sir *Samuel Maclellan*, who made the firſt Contract 'with Mr. *Walpole*, told him when he was at 'London, and ſoon after upon his Death-bed at 'Edinburgh, did declare the ſame, that a *Friend* 'of Mr. Walpole's *was to be a Sharer in the* 'Contract. Colonel *Douglas*, who was equally concern'd, declares, 'That Sir *Samuel* told 'him, that among others, he had admitted a 'Gentleman in *London*, recommended to him 'by Mr. *Walpole*, for a Share, and that he always underſtood, that Sharer was to bear e'qual Riſque with the reſt in caſe any Loſs 'ſhould be. And Mr *Mann* ſwears, 'That by 'an Agreement betwixt him and Sir *Samuel* 'Maclellan, he was to be a Sharer in this Un'dertaking, at equal Profit, or Loſs, as ſhould 'happen to ariſe in performing the Contract, 'together with ſuch other Partners as ſhould be 'taken into the Contract by Sir *Samuel Maclel*'lan, upon his arrival in *Scotland*. So that all the Evidence agrees, a *Third Perſon*, a *Friend of* Mr. *Walpole*'s, or *recommended by him*, was to be concern'd; and Mr. *Mann* ſwears poſitively himſelf to be this Third Perſon.

THE next ſtep is, Mr. *Montgomery* ſwears, 'That *John Campbell* and Colonel *Douglas* di'rected him to pay 500 *Guineas* to Mr. *Wal*-

'*pole*.

'*pole*. What says Colonel *Douglas* to this? 'That Sir *Samuel Maclellan* being dead, and he 'not knowing the Person, nor at that time re- 'membring his Name, judg'd it most proper 'to have the Money made payable to Mr. *Wal- 'pole*, or Order, for the Use of *his Friend*; 'and that upon hearing the Name of Mr. *Mann*, 'he recollects that to be the Name of the Gen- 'tleman that Sir *Samuel Maclellan* nam'd, as the 'Person recommended to be a Sharer in the 'Contract. This surely explains why the Notes were made payable to Mr. *Walpole*, and deliver'd to him, and is a further Proof, that Mr. *Mann* was from the beginning the Person concern'd in the Contract, and for whom the Share was reserv'd by Sir *Samuel Maclellan*.

Mr. *Montgomery* likewise swears, that, 'He 'paid the said Sum to Mr. *Mann*, who deli- 'ver'd him the Note with Mr. *Walpole*'s Re- 'ceipt on the back of it. This Mr. *Mann* ad- 'mits to be true, and at the same time upon his Oath declares, 'That he received the Money 'due by the said Note from Mr. *Montgomery*, 'at several times, for which he gave his own 'Receipts, and in his own Name, at the seve- 'ral times of Payments; which Receipts, at the 'Payment of the last Sum, were cancell'd, and 'a Discharge or Receipt in Full was written upon 'the back of Mr. *Montgomery*'s Note, over Mr. '*Walpole*'s Name, that was before only a blank 'Endorsement, which was done upon closing 'the Account betwixt Mr. *Montgomery* and the

‘ Deponent, as is uſual upon the like Occaſions. And here it is to be obſerv'd, that this Note remain'd all this time in Mr. *Mann*'s hands, untill it was taken up and cancell'd, together with the ſeveral Receipts at the payment of the laſt Sum. And in the ſame Affidavit Mr. *Mann* further depoſes, ‘ That the ſeveral Sums of money receiv'd by him ‘ from the ſaid Mr. *Montgomery* upon the two ‘ Notes of *Five hundred Guineas* and *Five hundred* ‘ *Pounds*, were receiv'd by him for his own ſole Uſe ‘ and Benefit, and that he has not paid the ſaid ‘ Sums, nor any part thereof, nor accounted for ‘ them, nor is under any Obligation or Agree- ‘ ment to pay or account for the ſame, or any ‘ part of them, to any Perſon whatſoever, but ‘ that the ſame does, and is to remain to his own ſole Benefit and Advantage.

Is it poſſible then that any thing can be more clear and expreſs than the Anſwers that are given to every part of the Charge againſt Mr. *Walpole* ? Or could any better Evidence be expected in this Caſe, than to prove *by Evidence upon Oath* that Mr. *Walpole* was no ways concern'd but in recommending Mr. *Mann* to be a Sharer in the Contract ; that the Death of Sir *Sam. Maclellan*, who alone had negotiated this Affair, occaſion'd Mr. *Walpole*'s Name to be made uſe of ; That Mr. *Walpole* endors'd the Note in form only, as an Aſſignment to Mr. *Mann*, for whoſe Uſe and Benefit the Note was given ; and that Mr. *Walpole* had not the leaſt Intereſt or Advantage directly or indirectly, in this whole Affair ?

Beſides

Besides the *positive Evidence upon Oath*, the concurring Circumstances render even the presumption stronger in Mr. *Walpole*'s Favour, than to his prejudice: The 1st Contract was made in *May*, 1709. to determine in *May* 1710; but the 1st Note was not given till the 29th of *June*, 1710. which was above a Twelvemonth after the Contract was made: Is it then more reasonable to suppose, that this was given as a Consideration to influence Mr. *Walpole*, in making a Contract, which was executed a year before, and was then expir'd; or that it was a proportion of Profit, due to Mr. *Mann*, as a Sharer, for which the other Contractors did not Account to him, until they saw at the Years end the neat Profit upon the whole, and could thereby determine what his Share amounted to? But may it not be presum'd that Mr. *Mann*'s Name was only made use of, and that this Share was in truth reserv'd for Mr. *Walpole*? You have heard already what Mr. *Mann*'s Oath says in Answer to that: But to consider it, by way of Argument; Mr. *Walpole* is suppos'd in this way of Arguing, to have had Caution enough, not to let his own Name be made use of for this Share, in making the Contract *with Sir Samuel Maclellan*, to have substituted Mr. *Mann* to meet *Sir Samuel* at a Tavern, and to Personate him thro' the whole progress of this Affair, where any Conversation or Discourse was had about it, and not to trust any of the Contractors with the Secret of his being concern'd, (for that Mr. *Montgomery* did

not

not pretend to say, that ever he had heard, or believ'd; and Colonel *Douglas* declar'd directly the contrary) and at last, after all this great Care and Caution, takes the Note Payable to himself, and Endorses it. Is it reasonable to believe that so much Care and Caution should be us'd all along, and at last be forgot, just when it became most necessary? Is it probable that there should be so much Management, where there was least Danger, and that Mr. *Walpole* should be so weak, as to give his own Hand in Evidence against himself, if he had been really Concern'd? Had it not been as easie to have had the Notes made payable to Mr. *Mann*, or could that have been forgot, if there had been any Art or Collusion that was before cover'd and disguis'd under his Name? For my part, I think the Note being made payable to Mr. *Walpole*, rather argues an Innocence than a Guilt, because nothing is so common, and obvious, as to use a third Name, where any sinister End is to be conceal'd.

What has hitherto been said, relates chiefly to the first Note only, but is applicable in general to the whole Transaction; but there being some difference in the Circumstances between the two Notes, I beg your Patience for an Observation or two, that chiefly concern the second Note.

It is said, that admitting all that Mr. *Walpole* alledges in relation to the 1st Contract to be true, and that there is no blame to be imputed to him upon that Account, how came Mr. *Walpole* to make a second Contract upon the same Terms, when

when he knew there was such a Profit upon the first? In Answer to this, I appeal to the Proceedings of the *House of Commons*, Printed by their Order; where by the Dates you will find that the Second Contract was made before the first Note was given; the 1st Contract was made for supplying Forage from *May* 1709, *to the* 14*th of May* 1710. which being then determin'd, the second Contract for Forage, from the 15th of *May* 1710, to the 15th of *May* 1711. was made before the Note was given, which was on the 29th of *June* 1710. and in Consequence Mr. *Walpole* at making the second Contract, had no knowledge of the Profit that arose from the first.

A great stress is laid upon Mr. *Walpole*'s having Endors'd the 1st Note, which is call'd a giving his Receipt for the Money; but the second Note, it seems, was never Endors'd at all; and yet there had been above 400 *l.* paid upon it, for which Receipts were given by Mr. *Mann*, or for his Use, upon distinct Papers, and not enter'd upon the Note, nor any mention made of Mr. *Walpole*, to whom the Note was made payable, and without whose Order, or Endorsement, there could be no Discharge for the Money; what stronger Presumption can there be, than that Mr. *Montgomery* at the time of Paying this Money, was satisfy'd, that Mr. *Mann* had a Right to the Money, whose Discharge he took for so great a Sum, without any mention made

or

or relation had to the Note, upon which it wa due; that to read this Note, and the Receipt that were given for the Money, as they ar Printed by Order of the *House of Commons*, i almost alone sufficient Evidence, to convince any Man, that this Money was paid for the Use and Benefit of Mr. *Mann*; and that Mr. *Montgomery* without being satisfy'd it was so, would hardly have paid such a Sum of Money, for which he had still been Accountable.

I remember there was an Objection made from something that dropt from Mr. *Montgomery* at the Bar of the *House*, as if the *five hundred Pounds* receiv'd by Mr. *Mann*, was more than a just share, arising from the Profits of the Contract. In Answer to this, I must observe, that the share reserv'd for Mr. *Mann*, is Stated by the *Commissioners of Publick Accounts*, to be a 5th Part; and the share for *Sir Alex. Murray* by the Evidence of *Colonel Douglas*, and the Oath of Sir *David Dalrymple*, who was likewise Sworn upon this Account by the *Commissioners*, to be a *Fourteenth part*; and Sir *Alexander Murray* receiving for his *Fourteenth part* 200 *l.* proves the Profit upon the whole to be about 2800 *l.* which Entitled the five principal Partners to above 500 *l.* a piece for their respective shares; but having this occasion to mention the Profits, it will not be improper to acquaint you, that each Years Contract amounted to about 20,000 *l.* that the Profit upon the whole, may not be thought Exorbitant.

I have heard an Objection raiſed from Mr. *Mann*'s refuſing to be a ſecond Time Examin'd by the *Commiſſioners of Publick Accounts*, from whence a conſciouſneſs of Guilt is inferr'd, as if the Cauſe was not able to abide a ſtricter Examination; In anſwer to this, 'tis firſt obſervable, that if there be any Weight in the Objection, it could have no Weight or Influence in the *Houſe of Commons* in convicting Mr. *Walpole*, becauſe the Complaint of Mr. *Mann*'s refuſal was not made to the *Houſe*, till after the whole Proceeding was over and paſs'd; But if it makes any Impreſſion upon Mens private Opinions, 'tis neceſſary that the World ſhould know, that when Mr. *Mann* went and voluntarily offered himſelf to be Examined by the *Commiſſioners*, after the Depoſition was made in Juſtification of Mr. *Walpole*, Mr. *Mann* was Examined and croſs-Examined upon his Oath by the *Commiſſioners* for above *Three Hours*, from whence they formed that notable ſecond Depoſition, that they thought worth preſenting to the *Houſe of Commons*; but in forming this ſecond Depoſition, they made themſelves the ſole Judges of what ſhould be inſerted and what omitted, and thereby left out ſeveral things that were material to explain the other Parts of the Information; this Method of Proceeding Mr. *Mann* might well apprehend would tend more to enſnare him, than to ſet the Matter in a true Light, and by the Account that I have heard of the Methods that the Commiſſioners

take in their Examinations, and reducing them afterwards into form, wherein altho' they add nothing, they take upon them to leave out as much as they pleaſe, which is never more than all that makes againſt their Purpoſe; I do not at all wonder that any Man that has the leaſt regard to his own Reputation, is unwilling to ſubject himſelf to ſuch new Methods of Juſtice; But if Seven ſuch ingenious Perſons were not able in *Three Hours* Examination to puzzle and confound an illiterate Perſon, enough to draw from him any thing that did in the leaſt affect Mr. *Walpole*, it will be very hard to make an inference to Mr. *Walpole*'s prejudice, becauſe Mr. *Mann*, who is by no Law ſubject to their Juriſdiction, as having never been concerned in any publick Capacity, was unwilling to be Examined again upon his Oath, after he had given them all the Information that he could, and had ſubmitted to a *Three Hours* Examination the Day before.

I have now given you the beſt Account I am able from my Memory, and the ſhort Notes I took upon this occaſion, of the *Evidence* that convinced me, that Mr. *Walpole* was neither guilty of the *breach of Truſt, nor the notorious Corruption*, that was laid to his Charge; Such Evidence, as I muſt declare, ſhall always have Weight with me; *Evidence upon Oath*, the Oath of a Gentleman of known Subſtance, unblemiſhed Character, and undoubted Credit and Reputation, ſupported by the moſt publick and

ſolemn

ſolemn Declaration of a Member of Parliament, (where no Oath can be taken) and confirmed by ſo many concurring Circumſtances and very ſtrong Preſumptions. If on the contrary, bare Preſumption and remote Inferences drawn from an Information looſely and artfully expreſſed, and for which the *Informer* has *ſince been ſo well Rewarded*, can come in Competition with ſuch *poſitive Evidence upon Oath*, whoſe Honour and Reputation, whoſe Life or Eſtate can ever be in any Safety?

WHAT a Precedent will this be for any future Parliament, that ſhall be inclin'd or inſtigated by a Miniſtry to oppreſs any particular Member, if ſuch Evidence, as in no other Court, by no Jury would be admitted to convict a Man even of *Petty Larceny*, ſhall be then thought ſufficient to deprive a Gentleman of his Liberty, his Seat in Parliament, and to brand his Name and Character with the infamous mark of Corruption? The time may come, when it may be thought the peculiar Priviledge of the *Guardians of the Liberty of the People*, to Cenſure, Deſire and Impriſon, without Evidence, or even contrary to direct Evidence, but hard will be the Fate of any Gentleman, that ſhall ſuffer thus without Redreſs, who is Innocent, and prov'd Innocent, by all the known Rules of Law and Juſtice; If Judges are once allow'd to Act, as they ſhall believe or diſbelieve, in their own private Opinions, and are not to be govern'd and directed by the Evidence,

that is given before them, how precarious must the Liberty and Property of the Subject be immediately render'd?

If *positive Evidence upon Oath*, impugn'd by Presumption only, is not sufficient to acquit a Man, who, that is charg'd in Parliament can ever be acquitted? Who can tell, how soon it may be the Fate of some of those Gentlemen, that our Friends think they are now serving, to have this Practice retorted upon them? Another Parliament may differ as much from this, as this has differ'd from former Parliaments, and those, that are now employ'd, it may be presum'd, will have acquired some little Knowledge in Business, by the Time, that they may happen to be removed, sufficient, at least, to give some Trouble in Parliament to those that shall then enjoy their Offices; What Ministry, if in times to come there shall ever arise a Ministry, that *Delights in* Defamation, and will condescend to such mean, and vile Practices, can ever want Informers, to fix a Charge upon such, as shall be then Troublesome or Obnoxious to them for not joyning in their Measures? And how will it be possible for any Man to escape a Censure, if what some Men may be willing to call a Presumption, shall be admitted against *positive Evidence upon Oath?* What Security can any one have in such a Case, unless the Country Gentlemen, who have wanted opportunitys to get Knowledge and Insight,

into

into the Publick Buſineſs and Accounts; ſhall begin to think it ill Policy, to be ſuch Tools to a Miniſtry, as to remove from among them ſuch, as are able to prevent their being impoſed upon.

THE prejudice of Party might perhaps have prevailed upon me to come up to a Cenſure of Mr. *Walpole*, and the influence of thoſe, who thought it neceſſary to remove him, might have induced me, to gratify them ſo far, as to have joyned in barely ridding them at preſent of ſuch troubleſome Company; but when nothing leſs than a Cenſure of *notorious Corruption* which ſuppos'd at the ſame Time Subornation in Mr. *Walpole*, and Perjury in Mr. *Mann* would ſatisfy, I could not perſwade my ſelf to go ſuch a length, in the Face of as direct and poſitive Evidence, as in my Opinion ever was or can be given.

I do allow, that in ſome Caſes a preſumptive Evidence muſt be admitted to be of Weight, but never where it is contradicted by a *poſitive Oath*; but where the Evidence is only Preſumption, how many Circumſtances are to be conſider'd, that will very much ſtrengthen or invalidate the Probability? In this Caſe had there been nothing but the Character of the Perſon concern'd, I muſt own it would have weighed very much with me; that which every Body eaſily believes of one Man, is often very incredible of another; and here I muſt do Mr. *Walpole* the Juſtice to ſay, that his

his worſt Enemys never ſo much as ſuſpected him, of making any indirect Profit, or Advantage to himſelf, in the ſeveral Offices where he has had the Honour to ſerve. The opportunitys that he has had of getting Money, and ſuch Temptations as he has withſtood, that few perhaps that went before him, or ſhall come after him, will have Virtue enough to reſiſt, are ſo many proofs of his Integrity, ſufficient alone, with any impartial Man, to outweigh a bare Preſumption; and when I ſee any Gentleman that has ſerved in ſuch Employments, undergo ſo ſtrict an Inquiſition, by ſuch as want neither Will nor Power to ſink his Character, and find no more is laid to his Charge, and that no better ſupported, I ſhall always be of Opinion that ſuch a Proſecution ſerves more to advance his Credit and Reputation, than any ways to ſully the Honour and Eſteem which he had obtained in the World.

IT is the Buſineſs and Duty of the *Houſe of Commons* to enquire into all Abuſes and Corruptions, and when any ſuch ſhall be made out before them, to do themſelves and their Country Juſtice; but if I ſhould live to ſee the Day, when Men are try'd, and not their Actions, when a Proſecution is carryed on, with more regard to the Perſon, than his Crimes, I hope, I ſhall be excuſed from joyning in any ſuch barbarous and unjuſt attempt.

rtys have been concerned in, is now own to such a height, as to give just Offence d Scandal to all the thinking part of Mankind; t if this Spirit of Injustice shall still further evail, and diffuse it self thro' all the Proceedgs of Parliaments, how grievous must it be the People, how destructive and derogatory the Honour and Dignity of Parliaments? o determine the Right of an Election, not by e Merits of the Cause, but by the *Party* the lember espouses, is certainly most unjust, but make *Party* the Rule and Measure of all our ctions, to Condemn, or Acquit by *Party*, in e only Judicature we have, which is that of ır own Members, to blast the Honour and Reıtation of a Member, and only for *Party*, to nprison, and to add to this the highest Penalty at is in our Power to inflict, Expulsion, and l this for the sake of *Party!* if this shall ever thought to be the Case, what can lessen more ıe Authority and Weight of Parliamentary ensures, what can tend more to make Parliaents not only the contempt but aversion of Iankind?

As I could by no means consent to the Senence that pass'd upon Mr. *V. Valpole*, so could as little concur with the Punishment that was ıflicted upon him; there is no more known ule of Justice than that Punishment should be lways adequate to the Crime; and admitting Mr. *V Valpole* to be Guilty of what was laid to is Charge, I confess I thought it a particular

instance

inſtance of Severity, to proceed to ſuch extremity with him. Had his Offence been of the higheſt and blackeſt Nature, and ſurely no body will ſay this was ſo, it was not in the Power of the *Houſe of Commons* to inflict any further Puniſhment upon him, unleſs they had order'd him to be Proſecuted at Law, which I cannot think, was avoided by Chance, or out of good Nature, but the want of ſuch Evidence, as every Man knew would be requir'd in *VVeſtminſter-Hall.*

IF the Name of Liberty is not entirely forgot in *England*, and is ſtill of any value amongſt us, if the Priviledge of Sitting in Parliament, is to be thought the firſt Honour an *Engliſhman* can be Ambitious of, and to be expell'd from that *Auguſt Aſſembly*, the laſt Diſgrace that can befall him, if a Man's Honour and Reputation is, or ought to be, dearer to him, than Life it ſelf, I hope, I ſhall be excus'd by thoſe, with whom I differ'd, that I could not give my conſent, to *a five Months Impriſonment*, which being attended with a great Expence, is likewiſe a *very conſiderable Fine*, to an *Expulſion from Parliament*, and to the fixing the *infamous brand of Notorious Corruption*, to be Recorded in the *Journals* to all Poſterity, upon a Gentleman's Name, whoſe Character is not inconſiderable, whoſe Defence was as ſtrong, and poſitive, as words can expreſs, and eſpecially for a Fact, which if it had been true, did not, in my Opinion, deſerve the leaſt of thoſe Severities. *I am,*

Sir, Yours, &c.

London, June 5. 1712. *The*

The Depoſition of John Montgomery, *Eſq;*

MR. *John Montgomery*, being ſworn, did depoſe, That Colonel *George Douglas*, and himſelf, were aſſumed Partners with Sir *Samuel Macklellan*, and Mr. *John Campbell*, in the Contract made with *Robert Walpole*, Eſq; late Secretary at War, to provide Forage for the Troops in *Scotland*, from the middle of *May* 1709, to *May* 1710. and likewiſe, with the ſaid *John Campbell*, in a ſubſequent Contract, from *May* 1710, to *May* 1711. which, by an Order from the Queen, or the Treaſurer, was continued to *October* 1711.

That Money was given to ſeveral Perſons, on Account of theſe Contracts, *viz.*

To Sir *David Dalrymple*, Two Hundred Guineas, in Conſideration that his Son-in-law, Sir *Alexander Murray*, was propoſed, but not admitted, to a Share of the Contract.

To the Earl of *Leven*, Commander in Chief of her Majeſty's Forces in *Scotland*, a Hundred Guineas Yearly, for his regulating the Quarters of the Troops.

To Mr. *Merrill*, Deputy to Mr. *Howe*, an Hundred Pounds Yearly, for keeping the Accounts between the Queen and the Officers: That the Queen paid a Penny *per Diem* for each Horſe at Graſs, and Three Pence *per Diem* for each Horſe at dry Forage, which, with the Stoppages from the Dragoons Pay, amounted to Three Pence Halfpenny for each Horſe at Graſs, and Nine Pence for each at dry Forage; and for anſwering Mr. *Campbell*'s Bills, and receiving the Queen's Bounty-Money for the ſeveral Agents, to whom it was firſt payable. To Mr. *Taylor*, Chief Clerk to Mr. *Walpole*, Fifty Pounds for both Contracts, for which he gave him his Note, but it is not paid as yet. That Sir *Samuel Macklellan* made the firſt Contract with the ſaid Mr. *Walpole*, while he was at *London*, and before he went to *Scotland* he told this Deponent, That a Friend of Mr. *Walpole*'s was to be a Sharer in the Contract, or to be redeemed by Sir *Samuel Macklellan* by a Sum of Money; and that Sir *Samuel* ſoon after, on his Death-bed, at *Edinburgh*, did declare the ſame; and that *John Campbell*, and Colonel *Douglas*, agreed and directed this Deponent to pay Five Hundred Guineas to Mr. *Walpole*; and that accordingly this Deponent gave Mr. *Walpole*, a Bill, or Note, payable to himſelf or Order, and delivered it into his own Hands, and that he paid the ſaid Sum to Mr. *Man*, who delivered the Note to this Deponent, with Mr. *Walpole*'s Receipt upon the Back of it.

That *John Campbell* entred into the second Contract, and directed this Deponent to give a Note for Five Hundred Guineas, or Pounds (but he is not sure which) to Mr. *Walpole*, as he had done the Year before, which he delivered also to himself, and the Note being put into the Hands of Mr. *Man*, he hath paid about Four Hundred Pounds thereof.

Jurat G. K. 8 *Dec.* 1711.

John Montgomery. 8 *Dec.* 1711.

The Depoſition of Mr. Robert Man.

THIS Deponent being ſworn, does upon his Oath declare, That in the Year 1709, he was, by the Recommendation of Mr. *Walpole*, the then Secretary at War, admitted and taken into a Share or Partnerſhip of a Contract made for furniſhing green and dry Forage to the Troops in *North Britain*, by Sir *Samuel Macklellan*, and others; and that by an Agreement betwixt himſelf and Sir *Samuel Macklellan*, he was to be a Sharer in this Undertaking, at equal Profit or Loſs, as ſhould ariſe or happen in performing the Contract, together with ſuch other Partners as ſhould be taken into the Contract by Sir *Samuel Macklellan*, upon his Arrival in *Scotland*.

THAT about a Twelve Month after Mr. *Walpole* gave to this Deponent a Note for Five Hundred Guineas, ſigned by Mr. *Montgomery*, which Mr. *Walpole* told him had been left with him for this Deponent, by the Contractors for Forage in *North-Britain*, which Note being made payable to Mr. *Walpole*, or Order, Mr. *Walpole* did then endorſe the Note with his own Name, upon Delivery of it to this Deponent.

THAT

THAT this Deponent has receiv'd the Money due by the said Note from Mr. *Montgomery* at several Times, for which he gave his own Receipts, and in his own Name at the several Times of Payment. Which Receipts, at the Payment of the last Sum, were cancell'd, and a Discharge or Receipt in full was wrote upon the Back of Mr. *Montgomery*'s Note over Mr. *Walpole*'s Name, that was before only a Blank-Endorsement, which was done upon closing the Account betwixt Mr. *Montgomery* and this Deponent, as is usual upon the like Occasions.

THAT upon a second Contract for the Year 1710, this Deponent receiv'd a Note of Mr. *Montgomery*'s for Five Hundred Pounds; that this second Note is made likewise payable to Mr. *Walpole*, or Order, and that this Deponent has receiv'd the greatest Part of the Money due thereon, although the same is not endorsed by Mr. *Walpole*, and that Mr. *Montgomery* has paid this Money, upon Receipts given in the Name, and for the Use of this Deponent, upon distinct and different Papers, and not enter'd upon the Note which is payable to Mr. *Walpole*, or Order, but not endorsed by him, or assigned to the Use of any Person; and this Deponent does declare, That the several Sums of Money received by him from the said Mr. *Montgomery* upon the two Notes of *Five Hundred Guineas*, and *Five Hundred Pounds*, were received by him for his own sole Use and Benefit; and that he has not paid the said Sums,

not any Part thereof, nor accounted for them, nor is under any Obligation or Agreement to pay, or account for the ſame, or any Part of them, to any Perſon whatſoever; but that the ſame does and is to remain to his own ſole Benefit and Advantage.

Rob. Mann.

Jurat. 14. *Jan.* 17$\frac{11}{12}$.
Geo. Lockhart. *Hen. Bertie.*
S. VVinnington. *Fra. Anneſley.*
Tho. Liſter. *VVill. Shippen.*
H. Campion.

The Second Depoſition of Mr. Robert Mann *upon his Examination before the Commiſſioners.*

MR. *Robert Mann* being ſworn, depoſed, That hearing a Contract was to be made for Forage for the Troops in *North-Britain*, he applied in Summer, 1709, to Mr. *VValpole*, then Secretary at War, to be concerned therein, but does not know that Mr. *VValpole* recommended him by Name, not being preſent; That he afterwards met Sir *Samuel Macklellan* at the War-Office, and being made known to him by Mr. *Taylor*, Mr. *VValpole*'s Clerk, went with him to a Tavern; That this was the only time he was in his Company, and no Witneſſes were preſent; That he then preſſed Sir *Samuel* to let him know what Share he was to have in the Contract, and who were to be his Partners. Sir *Samuel* ſaid he could not tell him then, but that he

he ſhould have a Share liable to Profit or Loſs, but did not know how many would be concern'd till he was in *Scotland*, and then he would ſend to him, but he never heard from him; That he further deſir'd to know what money he muſt advance on account of the Contract, and Sir *Samuel* anſwer'd him, What need you be ſo inquiſitive, ſince you ſhall benefit by it? He further depoſeth, That he did not know who were the other Contractors till this matter was brought into diſpute; That he never correſponded with Sir *Samuel*, or any other of the Contractors, or ever had any diſcourſe with them, or ever meddled with the management, nor ever ſaw any of the Accounts relating to this Contract; That he received the Note for the Five hundred Guineas from Mr. *VValpole*; That he was very cautious when in Mr. *Montgomery*'s Company, and never ſaid a Word of the Contract to him when he received the Money from him; That he never did advance any Money on Account of the Contract, and never was required by the Contractors ſo to do; That no-body ſpoke to him to be concerned in the ſecond Contract, but that he only deſired Mr. *VValpole* to think of him again; That he never had any diſcourſe with any other Perſon in relation to it, and did not know he was concerned in that ſecond Contract till he received the ſecond Note, dated in *Auguſt* 1710. from Mr. *VValpole*, to whom it was made payable. He further depoſed, That he is related to Mr. *VValpole*, has received his Rents

Rents, and tranſacted Buſineſs for him a great while: That he prepared an Affidavit, in order to produce to the Commiſſioners of Publick Accounts, which Mr. *Walpole* and his Clerk afterwards reduced into the form in which he preſented it.

Jurat. 14 *Jan.* 17$\frac{11}{12}$. *Rob. Mann.*

Geo. Lockhart. *Hen. Bertie.*
S. Winnington. *Fra. Anneſley.*
Tho. Liſter. *Will. Shippen.*
H. Campion.

The Narrative of Colonel Douglas, *as given by him in Evidence in the* Houſe of Commons, *and ſign'd by him.*

UPON Sir *Samuel Maclellan*'s return from *London* to *Scotland*, he inform'd me, that Mr. *Walpole* had contracted with him and *John Campbell* for foraging the Troops in *North-Britain* from the 14th of *May* 1709, to the 14th *May* 1710, at *Nine Pence* in the *Twenty-four Hours* for dry Forage for each Horſe, and *Three Pence Halfpenny* for Graſs, and that he had admitted Mr. *John Montgomery* for a Share, and that he had admitted *a Gentleman in* London *recommended to him by Mr.* Walpole for another Share, and had promiſed to admit Sir *Alexander Murray* for *a Fourteenth Share*, and that he would take me in for a Share if I pleaſed to accept of it.

ABOUT

ABOUT eight Months after Sir *Samuel Maclellan*'s Death, at a meeting with Mr. *Montgomery* on that Affair, it was agreed, that 500 *Guineas* ſhould be paid Mr. *VValpole*'s Friend for his Share in the Contract, and Sir *Samuel Maclellan* being dead, and I not knowing the Perſon, nor at that time remembring his Name, judged it moſt proper to have the Money made payable to Mr. *VValpole*, *or Order*, *for the Uſe of his Friend*, and I always underſtood that that Sharer was to bear equal Riſque with the reſt, in caſe any Loſs ſhould be, and I do think that upon hearing the Name of Mr. *Mann*, I do recollect that to be the Name of the Gentleman that Sir *Samuel Maclellan* nam'd as the Perſon recommended to be a Sharer in the Contract; and I declare that Sir *Samuel Maclellan* never told me, nor directly, nor indirectly ſignified to me, that Mr. *VValpole* had or was to receive any Sum of Money, or to have any Intereſt or Share in that Contract.

AND I underſtand that the 200 *Guineas* paid to Sir *David Dalrimple* was not upon his own Account, but for the Uſe of Sir *Alexander Murray*, and I always underſtood that the 100 *Guineas* paid yearly for the Uſe of the Earl of *Leven*, was given in Conſideration of Forage for his Horſes, which the Undertaker always uſed to furniſh to the Commander in Chief, or to give the Equivalent in money. The 50 l. order'd to Mr. *Taylor* was a Compliment to him upon leaving the Office, for his Trouble and *two*

Years

Years Correſpondence in anſwering Mr. *Campbell*'s Letters, and doing other Buſineſs relating to the Contract.

THE 100 l. yearly given to Mr. *Merril*, was for keeping and ſtating the Account of the Forage-money, and I underſtood that the ſecond Contract was upon the ſame Foot as the firſt, and for the ſame Sharers, except Sir *Samuel Macklellan*, that is dead; and that it can be made appear that the Prices given in theſe Contracts are not near ſo great as thoſe in the Contracts made in *Scotland* before the Union; and it is very well known, that in the Year 1709, and 1710, there was a greater Dearth and Scarcity of Forage in *Scotland* than had been for ſome preceding Years, or than can be pretended there is at this preſent time.

Geo. Douglas.

The firſt Note was made payable to Mr. Walpole, *or Order, and endors'd by him.*

The ſecond Note was likewiſe made payable to him, or Order, but not endors'd by him.

The Receipts.

Received, Nov. *the 25th*, 1710. *of Mr.* James Blackwood, *a Note drawn on Mr.* Howell *for Two Hundred Pounds, which when paid is in Part of a Note due from* John Montgomery *Eſq; of Five Hundred and Thirty Guineas. I ſay received,*

L. 200. *Per* Rob. Man.

Received

Received, June *the 7th*, 1711. *of* John Montgomery *Esq*; *One Hundred Pounds*, *for my Partner Mr.* Robert Man.

L. 100. *Per* Will. Daye.

Received, July *the 21st*, 1711. *of* John Montgomery *Esq*; *Fifty Pounds*, *for my Master* Robert Man.

L. 50. *Per* Edward Shearme.

September 24. 1711.

Received then a Note of John Montgomery *Esq*; *drawn by* John Searlett *on* John Ward *Esq*; *for Two Hundred Forty One Pounds Twelve Shillings*, *dated* Jan. 25. *last past*, *payable to* Baily Archibald Cockburn, *Eight months after Date*; *which Note I promise to be accountable for on Demand.*

Per Rob. Man.

POSTSCRIPT.

HAving given you the Trouble of the foregoing Account, I thought you might have a farther curiosity to know, what pass'd afterwards upon Mr. *Walpole*'s being re-elected, and again expell'd; Upon which occasion, as I had the misfortune to differ from the Majority, I will acquaint you with the Reasons and Arguments, that chiefly weigh'd with me, and upon which I form'd my Judgment.

I need not observe to you, that there was not the least Objection made to the Merits of this Election, the Disproportion in the Numbers upon the Poll was so great, that all the Engagements made to Mr. *Taylor*, to bring him in, right or wrong, were dropt and given up.

THE great Endeavours, and indirect Practises, that were us'd to prevent Mr. *Walpole*'s being chose again, are worth the notice; I need not tell you, from what corner the Expence was

was supplied; was I but to name the Gentleman that was sent down upon this occasion, you would immediately conclude, that he Travell'd *Carriage paid*, unless a sudden fit of Generosity came upon him, and his good Will to Mr. *VValpole* prevail'd with him to exert more against him, than ever he had the Heart to do for himself; such a particular Obligation Mr. *VValpole* must be sensible of, and I dare answer for him, he will never forget.

As I think the whole Proceeding against Mr. *VValpole* is far from being any Discredit to him, so it must be thought a particular Honour done him, to see his Country still retain the same good Opinion of him, and that so considerable *a Corporation* had Vertue and Resolution enough, to do his injur'd Character justice, and return him, in opposition to Power, Corruption, Party-malice, and the United Strength of all the *Non-jurors*, *Non-abjurors*, and concealed *Jacobites* of the Country, countenanced by *Court Emissaries*, *Half Receivers General*, and *Itinerant Justices of the Peace*.

But being Elected, and returned a Member to serve in Parliament, according to the Law of the Land, and the Law of Parliament, was not sufficient to secure to Mr. *VValpole* his Seat in the *House of Commons*, he that was before Expelled, in the manner you have heard, for the same Reasons was not to be admitted to Sitt upon any Account; to Expel

him again in expreſs Words, would have look'd a little too harſh; but to declare him incapable, amounted to the ſame thing, and ſerv'd the purpoſe juſt as well.

BUT before I enter upon the main Argument, give me leave to obſerve, that here not only the Right of the Member elected, but the Rights and Privileges of the Electors, are nearly concern'd; for next to the disfranchiſing of a *Corporation*, and taking from them entirely the power of electing, to ſeclude or expel, without juſt cauſe, ſuch Members, duly qualified, as they have thought fit to elect, is an Invaſion and Violence offer'd to the fundamental and invaluable Privilege, of chooſing their own *Repreſentatives*. I am ſenſible the *Houſe of Commons* has often taken upon them and exerciſed the power of expelling Members, which has been ſubmitted to, becauſe 'tis hard to tell how or where to find redreſs; but I will venture to affirm, that no Member, whoſe Right of ſitting is undoubted, and not controverted, can legally loſe or forfeit that Right upon Account of any Act or Offence done or committed by him in any other Capacity but that of a Member. A man may certainly, *quatenus Member*, offend in many inſtances, ſo as to deſerve Expulſion, but I ſhall be ſorry to ſee the Practice of expelling upon any other Account made familiar to a *Houſe of Commons*; That method of *weeding out* ſuch as ſhall be diſagreeable to a majority, and render'd ſo by

the

the Insinuations of a *Ministry*, may give a *Designing Ministry* a Power in Parliament dangerous to the Liberty of the People, may enable them to impose the grossest Falsitys upon an *ignorant Representative*, may facilitate the passing scandalous *Misrepresentations* when such shall be necessary to support the Cause, may bring Parliaments into a general disesteem, when it shall be seen too late, that their Resolutions were not founded upon Facts, nor supported by Truth, and may end at last in the utter Subversion of our Constitution; for who can doubt if a *House of Commons* can ever be work'd up to vote Expulsions and Incapacitys at the Will and Direction of a *Ministry*, that an *Ill-ministry* will ever suffer themselves to be troubled with such as are able and will presume to explain, perhaps expose, or even debate against their Measures; that if this Practice shall ever prevail, a man will be no longer in danger of losing only a Place or Employment at Court, for not complying, but his Place in *Parliament* must follow, that too will become precarious, and be held only, *durante beneplacito*, at the Will and Pleasure of an Arbitrary *Ministry*.

I come now to consider the main Question, Whether Mr. *Walpole* was at the time of his Election incapable of being elected a Member to serve in Parliament; and if he was capable, how far a second Expulsion was just and reasonable?

THE Incapacity must arise either from the Tenour and Words of the *Writ*, or from Mr. *Walpole*'s being a Prisoner in the *Tower*, or from his having been expell'd *the House*.

THE Words in the *Precept* from which the Objection is taken, are, *In loco prædicti, &c. alium Burgensem eligi facere, &c.* But in this Objection there can be no weight; for the same Person being re-elected, is as much another Burgess as any other Person would be. Besides in all Vacancies during the continuance of a Parliament, or in case of an Election being made void upon any account whatsoever, the Words of the *Precept* are always the same; and yet there are innumerable Instances where the same Person has been again elected, and return'd upon the vacancy of himself, and admitted to be duly elected and returned without any Dispute or Controversy.

NOR is there any more ground to say, that being a Prisoner in the *Tower* renders a Man incapable of being elected; whatever subjects a Man to an Incapacity of being elected, does equally subject him to an Incapacity of continuing a Member, altho duly elected before; As a *Commissioner of the Customs or Excise* is made by the Law incapable of being elected, so any Member of Parliament accepting of those or any other disqualifying Office, is thereby render'd immediately incapable of sitting and voting in Parliament, and his Election is *ipso facto* void. By the same Rule, if a Commitment by the *House of Commons*

Commons renders a Man incapable of being elected, it likewiſe renders him incapable of continuing a Member, and then the Commitment of a Member is in it ſelf an Expulſion, and all Votes of Expulſion, after a Commitment, are utterly unneceſſary and ſuperfluous; But as it is moſt notorious that a Commitment is not in it ſelf an Expulſion, and that many Members have continued a whole Seſſions under Confinement, and afterwards ſat again in the ſame Parliament, it neceſſarily follows, that Mr. *Walpole*'s Impriſonment did not render him incapable of being elected, and in conſequence He being duly and indiſputably elected, had an undoubted right to ſit and vote in this Parliament, as ſoon as his Impriſonment ſhould be determin'd; and 'tis unreaſonable to ſuppoſe that an Impriſonment ſhould make an Incapacity for the whole Parliament, when the Impriſonment it ſelf does neceſſarily determine with the preſent Seſſion.

THE ſingle Queſtion then is, Whether an Expulſion neceſſarily implys an Incapacity of being elected again into the ſame Parliament?

ALL Incapacitys muſt ariſe either from ſome known Law or Statute, or from the Uſage and Cuſtom of Parliament, which is the Law of Parliament. That there is any expreſs Law or Statute, will not be pretended; 'tis then to be conſider'd, how far this Pretence can be ſupported by Precedents; And in this caſe it ſeems ſufficient to inſiſt, that there can be no Precedent given, where an Expulſion has been

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conſtru'd an Incapacity, unleſs it was at the ſame time made part of the Sentence, and declar'd expreſly to extend ſo far; ſo that if it be a known Rule, that no Subject can incur any Penalty, or loſe or forfeit any Right, Privilege, or Property, without the Authority of ſome Law, or Uſage, and Cuſtom, where that is the only Law, it will follow that an Expulſion ought not to be deem'd an Incapacity, if no one Inſtance can be given where it has been ſo judg'd by Parliament.

AND as it is neceſſary to ſhow, that a bare Expulſion has of it ſelf been conſtru'd an Incapacity, ſo it may very juſtly be infer'd, an Incapacity having in ſome caſes been expreſly inſerted, and made part of the Sentence, that, where it is omitted, 'tis not to be ſuppos'd that 'tis neceſſarily imply'd, becauſe it would be needleſs at any time to expreſs and declare what of it ſelf muſt be thought a neceſſary Conſequence.

AND here I cannot omit taking notice of a Doctrine which I heard advanc'd, I mean, *The Doctrine of Intendments*. I have heard of *Innuendos* in former Reigns, and heard it always exploded as the firſt inſtance of Tyranny and Oppreſſion, that Men ſhould be argued to be guilty of Crimes by Conſtruction, and ſuffer for the ſuppos'd meaning of the Law, where they had offended againſt no expreſs Law; but I never heard till now, that not only the Law, but that a *Sentence and Judgment did mean or intend*, or was to be ſuppos'd to *mean or intend* more than

than it really expreſs'd. If this is Law, in what a precarious State and Condition are the Lives and Propertys of the Subject? If it ſhall ever be thought after Judgment paſs'd and executed, that the Sentence did not expreſs enough, ſhall any Man ſuffer farther beyond the expreſs Words of a Sentence according to ſuch Meanings or *Intendments* as Art and Ingenuity ſhall be able to put upon it? Such Doctrines had been proper for thoſe Times and that Reign which made the *Revolution* neceſſary, but I hope will never prevail until the *Revolution* is entirely ſet aſide; and we come to be openly told, that the *Proteſtant Succeſſion intended* what no body yet dreamt of; and that the Excluſion of all Papiſts did *not intend* the Excluſion of any body that ſhall call himſelf a Proteſtant.

No Man will deny but that to be made incapable of being elected, is a further and an additional Puniſhment to the being expell'd; how then can it be thought juſt, when *the Houſe* had proceeded to Cenſure and Puniſh as far as they thought the nature of the Crime requir'd, (and no body I believe thinks there was any Mercy or Lenity ſhown in the preſent Caſe) to add to their former Puniſhment the further Severity of declaring Mr. *Walpole* incapable of being elected, which at that time, if they had thought it reaſonable, had been proper, and in their Power to do; but to make ſuch a Declaration afterwards, is to expel him again, and to inflict another Puniſhment for the ſame Crime for which he muſt be

thought to have ſuffer'd already very ſeverely, and beyond all Precedent.

WILL any Man ſay, that *the Houſe* might not without contradicting one Word of the Judgment paſs'd upon Mr. *Walpole*, or without the Breach of any Law, Uſage, or Cuſtom of Parliament, have admitted Mr. *Walpole* upon his new Election? If ſo, I will venture to affirm, that they ought to admit any Man whom they legally may, and not to admit a Man to the Enjoyment of a legal Right, is what Power for a time may ſupport, but nothing can juſtify.

IF no Law or Uſage makes Expulſion an Incapacity, nothing but a Declaration of Parliament can do it; which having not been made previous to the Election, there could be no Incapacity at the time of the Election; and ſuch a Declaration ſubſequent to the Election, is, in other Words, a ſecond Expulſion.

THE Honour of *the Houſe* is no way concern'd in admitting a Member upon a new Election whom they had before expell'd, unleſs they were themſelves the Electors; They are the ſole Judges who are duly and legally elected, but the *Corporations* have the ſole power of determining who are fit and proper Perſons to be elected, under ſuch Qualifications and Reſtrictions as the Law directs.

I will trouble you with no more Reaſons and Arguments, but ſhortly touch upon all the Precedents that ſeem at all to affect the preſent caſe.

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THE case of Mr. *Sloan* is the only Precedent that has been pretended to, but does not come up to the present Question; *The House* resolv'd, 'That Mr. *Sloan* in treating the Corporation of '*Thetford*, had been guilty of a breach of the 'Act of Parliament for preventing Expences in 'Elections; and thereupon the Election was void, and a new Writ was issued; and Mr. *Sloan* being again elected, the Question was upon the Construction of the Act of Parliament, how far the treating at the first Election was to be suppos'd to influence the second Election; and the Resolution that he was not capable to serve in Parliament, is not general, but confin'd to the Burrough of *Thetford*; So that Mr. *Sloan* was neither expell'd, nor declar'd incapable of sitting in that Parliament, as having been expell'd, but only not capable of serving for that *Burrough*, which he had corrupted, and where the former treating might be suppos'd still to operate, but he might have been chosen in any other *Burrough*, and sat in that Parliament even after the last Resolution, and by consequence was under no such Incapacity as is now contended for.

The Resolution in Mr. *Hall*'s Case, in Queen *ELIZABETH*'s Time, was, 'That '*Arthur Hall* should be presently remov'd, se-'ver'd, and cut off from being any longer a 'Member of this House *during the continu-'ance of this present Parliament*. Which Sentence in our modern Language, is not only an Expulsion, but a Prohibition to his being again chosen

chosen into that Parliament; which is declaring him incapable, and making the Incapacity part of the Sentence and Punishment.

Mr. *Wollaston* was expell'd, re-elected, and sat in the same Parliament unmolested; and the Distinction that is made upon the Cause of his Expulsion, does not alter the Case, for 'tis the Sentence and Judgment of the House, if any thing, and not the Crime or Occasion, that makes the Incapacity; and either every Man that is expell'd is thereby made incapable, or no Man.

Sir *Robert Sawyer* was likewise expell'd, and re-elected immediately after the Sentence of Expulsion was pass'd, in the Vacancy occasion'd by his own Expulsion.

These Considerations prevail'd with me to be of opinion, that if Mr. *Walpole* was to be try'd by the Law of the Land, or by the Law and Usage of Parliament, or by any known Rules of Reason and Justice, there was no foundation to declare, that he was incapable of being elected a member to serve in this present Parliament; and I am afraid that if his Case comes to be throughly consider'd, it will be thought an Hardship of the first Impression, that for a slight Offence, prov'd by no direct Evidence, vindicated by *positive Evidence upon Oath*, a Gentleman should be censur'd in the strongest Terms, imprison'd, and expell'd the House, and afterwards expell'd again.

FINIS.